IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9515 OF 2004

Mrs.Nirmala Tukaram Bankar Petitioner

versus

The State of Maharashtra and others Respondents

N.V.Bandiwadekar, adv. for petitioner.

R.D.Rane, Addl.Govt.Pleader for R.1 to 3.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.

DATE : 14th December 2004

PC :

1. This is a petition under Article 226 of Constitution of India. It is directed against an order dated 25th-27th October 2004 passed by Education Officer (Secondary), Zilla Parishad, Nashik. By this order the Education Officer has held that the appointment of petitioner cannot be approved and consequently her services are liable to be dispensed with. He further directed the management to appoint Mrs.Pooja Katkade in future vacancy or any new post created in the concerned institution.

2. At the out set, Mr.Bandiwadekar, learned counsel appearing for petitioner requests for deleting respondent no.6. At his request and risk name of respondent no.6 is deleted.

3. We have heard Mr.Bandiwadekar for petitioner and Mr.Rane for respondents 1 to 3. The presence of management is not necessary. Mr.Bandiwadekar submits that the impugned order is passed in gross violation of principles of natural justice inasmuch as no notice was given to the petitioner nor any opportunity of what so ever nature was afforded to her before said order was passed. He invites our attention to the fact that the impugned order has serious civil consequences. By the impugned order respondent no.3 has informed the management that approval granted to the petitioner as early as on 15th October 1997 is cancelled. He submits that when the issue for consideration was approval to the appointment of petitioner the minimum that was expected from the authority was a notice to the petitioner and opportunity to put forward her case. He submits that by an order passed behind her back, the petitioner is seriously affected and prejudiced inasmuch as she is about to loose her source of

livelihood.

4. With the assistance of learned counsel appearing for parties we have perused the impugned order. In our view, the impugned order does not indicate as to why approval granted as early as on 15th October 1997 to the appointment of petitioner as Full Time Teacher is liable to be revoked. The order of approval dated 15th October 1997 clearly states that a proposal was forwarded by the management as early as on 30th August 1997. The information provided by the school was relied upon by the authority and approval was granted to the petitioner's appointment at the school made on 28th July 1997. The educational qualifications of petitioner have been set out. The pay scale also has been set out. The petitioner has been appointed in a post which was vacant. The concerned employee Mrs.Nihalani in whose place petitioner came to be appointed had remained absent from 2nd January 1988. Therefore, the appointment made in 1997 and approved by Education Officer undisturbed.

5. It is pertinent to note that concerned teacher who has been now directed to be absorbed was refused approval by the same authority

(respondent no.3) on 12th September 2001 by assigning reasons including backlog of reservation. The concerned teacher (Mrs.Katkade) did not challenge this order. Therefore, we fail to see any reason for re-opening the issue of approval of petitioner's appointment and absorption of Mrs.Katkade.

6. We are really surprised and shocked at the manner in which serious matters such as approval to the appointment of teachers is handled by the Education Department. Approving services of a teacher by taking cognizance of proposals by management is a matter which has to be decided according to the well settled principles of equity, justice and fair play. When the issue is of cancellation or withdrawal of approval earlier granted, the minimum that is expected from the authorities is to comply with the principles of natural justice and assign cogent and satisfactory reasons as to why they deem it fit to withdraw or cancel the approval granted earlier. In our view, in the facts and circumstances of present case there does not appear to be any justification for cancelling the approval to the appointment of petitioner granted on 15th October 1997 after seven years.

7. In the result, the impugned order cannot be sustained. The writ petition succeeds. We hold that the order dated 25th/27th October 2004 is bad in law and is hereby quashed and set aside. We restore the approval granted to the petitioner's appointment in respondent no.5 school on 15th October 1997. Needless to observe that the management as well as the authorities should treat the petitioner as an approved teacher and continue all benefits including payment of salary as per the prescribed scale.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)